(4)

90-1217

Supreme Court, U.S.
FILED
JAN 28 1991
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1990

Shirley M. Kearing,
Petitioner,

v.

The Honorable S. Martin Teel, Jr., et al,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
For the District of Columbia

APPENDIX C
DISTRICT COURT

Shirley M. Kearing, Pro Se
For the Petitioner
4200 Cathedral Avenue, N.W.
Washington, D.C. 20016
(202) 244-6198

FILED JUNE 4, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	:	
	:	
LEON R. AND	:	
SHIRLEY M. KEARING,	:	Mis. No. 89-224
	:	(Bankruptcy No.
	:	86-00913)
Debtors.	:	

ORDER

Upon consideration of the Trustee John Guinee, Jr.'s Emergency Motion for Issuance of Order of Incarceration, the opposition thereto, and the entire record herein, and for the reasons stated today in open court, it is hereby

ORDERED that Leon R. Kearing and Shirley M. Kearing (the debtors) shall not take any action, or cause any other person to take any action, individually or jointly, of any kind to interfere with the Trustee's efforts to the sell [sic] the property located at 4801 Van Ness Street, N.W., Washington, D.C., including, but not

limited to, telephoning, contacting, writing or communicating in any way with any real estate agent or prospective purchaser about any matter whatsoever; and it is further

ORDERED that Leon R. Kearing and Shirley M. Kearing shall not take any action or cause any olther person to take any action, individually or jointly, to telephone, contact, write or communicate with the Trustee or his agents about any aspect of the sale of the property, the existence of a pending appeal before the United States Court of Appeals for the District of Columbia Circuit (89-7211), or the debtors' concerns; and it is further

ORDERED that Leon R. Kearing and Shirley M. Kearing (the debtors) shall not go within 100 yards of the property located at 4801 Van Ness Street, N.W., Washington, D.C., or within 100 yards of the residence

or office of any prospective purchaser or any real estate agent involved in the sale of the property at 4801 Van Ness Street, N.W.; and it is further

ORDERED that if either of the debtors violates this Order or the Consent Order of October 31, 1989, entered by the Honorable Thomas P. Jackson of this Court, then upon the affidavit of the Trustee, he or she shall be arrested and incarcerated until he or she demonstrates a plan of cooperation completely satisfactory to the Court.

/s/ Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE

June 4, 1990

FILED JUNE 1, 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	:	
	:	
LEON R. AND	:	
SHIRLEY M KEARING,	:	Mis. No. 89-224
	:	(Bankruptcy No.
	:	86-00913)
Debtors.	:	

OPPOSITION TO EMERGENCY MOTION FOR ISSUANCE OF ORDER OF INCARCERATION

Comes now the Debtor herein, Shirley M. Kearing, by an through her counsel, John Parazich, Esquire, and for her opposition to Emergency Motion for Order of Incarceration states as follows:

(1) The Trustee alleges that the Debtor is "in violation" of Judge Jackson's Order of October 30, 1989, which precludes the Debtor and her husband from interfering with the Trustee's effort to sell certain real property and requiring the Debtors to cooperate with the Trustee with respect to such sale. The Debtor assumes the pending

Motion to be in the nature of a rule to show cause as to why she should not be held in contempt and so responds.

(2) While movant alleges that the Debtor "threatened to obstruct the sale ..." (paragraph 3) with respect to one witness and exhibited "similar threatening intent" (paragraph 4) with respect to another, movant fails to allege, much less to establish through affidavits, that the Debtor has interferred, either directly or indirectly with the Trustee's efforts to sell the property or that the Debtor has failed to cooperate with the Trustee in the seven months which have passed since the Order was issued.

(3) Assuming, arguendo, the accuracy of the quotes attributed to the Debtor in paragraph 4 of Exhibit C and in paragraph 3 of Exhibit D, the "interpretations" of these words, when considered in the context

of the totality of circumstances surrounding this matter, as set forth in paragraph 5 of Exhibit C and paragraph 5 of Exhibit D, are flights of fancy which go far beyond the ordinary meanings of the words used.

(4) An explanation of the Debtor's actions is set forth in greater detail in her Affidavit attached hereto as Exhibit A.

WHEREFORE, Debtor respectfully requests that this Motion be denied and that she be awarded costs and attorney's fees attendant to this proceeding.

Respectfully submitted,

/s/ John Perazich

John Perazich, Esquire, #27144
PERAZICH AND WYNN
1201 Connecticut Avenue, N. W.
Suite 750
Washington, D. C. 20036
(202) 331-7530

FILED JUNE 1, 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Misc. No. 89-224
SHIRLEY M. KEARING,	)	(Bankruptcy No.
	)	86-00913)
Debtors	)	

AFFIDAVIT OF SHIRLEY M. KEARING

I, Shirley Kearing, being first duly sworn under oath, deposes and states as follows:

1. Since this Court's Order of October 30, 1989, to my recollection, I have had no contact with either the Trustee, John W. Guinee, Jr. or the real estate broker, Jeannne Sears, regarding the sale of 4801 Van Ness Street, N.W. with the exception of the contacts described in paragraphs 3, 4 and 5 infra.

2. The Affidavit of Hoyun Kim (Exhibit B), reflects that on May 25, 1990, he mailed to me certain documents. Upon

review of those documents, it seemed to me that the contract purchasers had not been notified of the fact that my husband and I have pending in the United States Court of Appeals for the District of Columbia Circuit, a case (No.89-7211), which I understand to be a "cloud" affecting the proposed sale.

3. The Affidavit of Jeanne Sears (Exhibit C), reflects that on May 26, I called her and left a message on her answering machine requesting that Ms. Sears provide me with the phone number of the contract purchasers of 4801 Van Ness Street, Jose M. Alonso Biarge and Maria-Jose Escardin. Notwithstanding Ms. Sears' "interpretation" of the purpose of my call, my intent was to make the buyers aware of the litigation which I reference in paragraph 2. supra and, by my words, I did not threaten her nor intend to threaten

her.

4. On May 26, 1990, I called and spoke with the Trustee, John Guinee, Jr., for the purpose of conveying to him the information referenced in paragraphs 2. and 3. supra. During the course of that conversation, Mr. Guinee threatened me by stating that "Elizabeth Morgan's cell is waiting for you!"

5. The Affidavit of John Guinee, Jr. (Exhibit D) reflects that on either May 26 or May 27 I called him and left a message on his answering machine which was no more than an expression of frustration my husband and I feel as a result of our current situation. By my words, I did not threaten nor intend to threaten Mr. Guinee.

6. I have not contacted nor have I attempted to contact the contract purchasers herein.

7. Since October 30, 1989, I have not

interfered, directly or indirectly, with the Trustee's efforts to sell the property in issue nor have I been uncooperative in that regard.

8. Further Affiant saith not.

/s/ Shirley M. Kearing
SHIRLEY KEARING

FILED MAY 31, 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Misc. No. 89-224
SHIRLEY M. KEARING,	)	(Bankruptcy No.
	)	86-00913)
Debtors	)	

AFFIDAVIT OF JEANNE SEARS

I, JEANNE SEARS, hereby declare as follows:

1. I am an agent of Coldwell Banker Real Estate ("Coldwell Banker"), a licensed District of Columbia real estate broker, with offices at 4801 Wisconsin Avenue, N. W., Washington, D. C. 20016.

2. The following statements are based on my own knowledge.

3. Coldwell Banker was retained by Trustee John W. Guinee, Jr., to market the real property at 4801 Van Ness Street, N.W., Washington, D. C., (the"Property").

4. On Saturday, May 26, a message was

left on the answering machine at my home as follows: "My name is Shirley Kearing and the real property located at 4801 Van Ness Street, Washington, D.C. is not for sale. The trustee has entered into a contract to seel the property with you and I want to know the telephone number of Jose M. Alonso Biarge and Maria-Jose Escardin because I want to call them and tell them they are not innocent third parties. Now please return my call 244-61 [at this point, the machine cut off the message]."

5. I interpreted the telephone call as an effort by Mrs. Kearing to stop the sale. The call has been very upsetting to my family and me.

6. In my professional opinion, if Mrs. Kearing contacts the purchasers of the property, they will not want to go through with the purchase of the Van Ness property and the sale will be lost.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Jeanne Sears
Jeanne Sears

FILED JANUARY 22, 1990
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHIRLEY M. KEARING
4200 Cathedral Avenue, N. W.
Apartment 915
Washington, D. C. 20016

(202) 244-6198

PLAINTIFF,

vs.

Civil Action

No. 89-2837
(GAG)

The Honorable
S. Martin Teel, Jr.
Bankruptcy Judge
United States
Bankruptcy Court for
the District of Columbia
Room 2106
3rd Street &
Constitution Avenue, N. W.
Washington, D. C. 20001

and

Martin L. Bloom
Clerk
United States
Bankruptcy Court for
the District of Columbia
Room 2400
3rd Street &
Constitution Avenue, N. W.
Washington, D. C. 20001

and

John W. Guinee, Jr.
1514 Inlet Court
Reston, Virginia 22090

and

Peter R. Kolker, Esq.
1201 Connecticut
Avenue, N. W.
Washington, D. C. 20036

and

Renee Franklin Hill, Esq.
Office of Bar Counsel
Board on
Professional Responsibility
District of Columbia
Court of Appeals
515 5th Street, N. W.
Building A
Washington, D. C. 20001

and

The Law Firm of Zuckerman,
Spaeder, Goldstein,
Taylor & Kolker
1201 Connecticut
Avenue, N. W.
Washington, D. C. 20036

and

Dennis Early, Esq.
Office of the
United States Trustee
421 King Street
Alexandria, Virginia 22314

and

John Waites, Esq.
United States Trustee
421 King Street
Alexandria, VA 22314

and

Herbert M. Rutherford, III
United States Marshal for
the District of Columbia
Room 2419
3rd Street &
Constitution Avenue, N. W.
Washington, D. C. 20001

and

J. Neely, Deputy
Office of the
United States Marshal for
the District of Columbia
Room 2419
3rd Street &
Constitution Avenue, N. W.
Washington, D. C. 20001

and

V. Kerr, Deputy
Office of the
United States Marshal for
the District of Columbia
Room 2419
3rd Street &
Constitution Avenue, N. W.
Washington, D. C. 20001

and

P. Link, Deputy)
Office of the)
United States Marshal for)
the District of Columbia)
Room 2419)
3rd Street &)
Constitution Avenue, N. W.)
Washington, D. C. 20001)
)
DEFENDANTS.)

AMENDMENT TO ~~(ILLEGAL ARREST)~~ COMPLAINT FOR DAMAGES

1. This Court has jurisdiction pursuant to the United States Constution, Amendment V, and 42 U.S.C.A. 1983.

2. Plaintiff is an adult citizen of the United States and a resident of the District of Columbia.

3. On or about October 14, 1988, at 3:15 p.m., under "color of law" the above named defendants, through malfeasance, misfeasance and nonfeasance of duty, did cause a tortious act by violating plaintiff's guaranteed fundamental protection of due process of law by consummating an illegal arrest and incarceration of the above-named plaintiff

in blatant and malicious use of process in direct violation of the Constitution of the United States of America.

4. In the original Complaint for Damages (Illegal Arrest), the Plaintiff unintentionally omitted the United States Marshal for the District of Columbia, Herbert M. Rutherford, III, and his deputies, J. Neely, V. Kerr and P. Link.

WHEREFORE, the premises considered, the plaintiff hereby respectively requests:

(a) That her original complaint be amended to include the above-named defendants; and

(b) That her demand for judgment against all defendants be amended from the original amount of TWENTY-NINE MILLION DOLLARS ($29,000,000.00) to include further exemplary damages of FIVE MILLION DOLLARS ($5,000,000.00) for

a total amount of THIRTY- FOUR MILLION DOLLARS ($34,000,000.00).

Plaintiff Demands Trial by Jury.

/s/ Shirley M. Kearing
SHIRLEY M. KEARING, Plaintiff

FILED OCTOBER 31, 1989
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Misc. No. 89-224
SHIRLEY M. KEARING,	)	[Bankruptcy Case
Debtors	)	No. 86-00913]

ORDER

Upon the consent of the Trustee and of the debtors, Leon and Shirley Kearing, and it appearing to the Court that a factual basis has been established for finding the debtors in contempt, in that the debtors have wilfully and intentionally prevented the Trustee (including his agents) from selling the property located at 4801 Van Ness Street, N.W., Washington, D.C., the Court makes the following:

FINDINGS OF FACT

(1) The debtors Leon and Shirley Kearing are hereby found to be in contempt of the Bankruptcy Court's Order of April 23, 1988 in that they have interfered with

the Trustee's efforts to sell the property by posting notices on the property, ~~changing~~ tampering with [previous underline is handwritten insertion initialed by SK and LRK] the locks on the property and taking occupancy of the property all without the approval of the Trustee and in direct contravention of the Trustee's express directions;

Therefore the Court reaches the following:

CONCLUSIONS OF LAW

(1) Debtors Leon and Shirley Kearing be and they hereby are found to be in contempt of the order of April 23, 1988 entered by the Bankruptcy Court.

In consideration whereof, the Court enters the following

ORDER

That the Debtors shall remove all articles they have placed in the property

by entering upon the property with and only with the consent of the Trustee or his designated agent and the debtors shall take no action of any kind to interfere with the Trustee's efforts to sell the Property, and if the debtors fail to cooperate with the Trustee, then, upon the Affidavit of the Trustee reflecting such non-cooperation with his efforts to sell the Property, the debtors shall be arrested and incarcerated until they demonstrate a plan of cooperation completely satisfactory to this court ; provided however that a copy of the said Affidavit of the Trustee is served upon counsel for the Debtors and Debtors within seventy-two (72) hours from service of the said Affidavit or such additional time as this Court may provide by further order fail to show cause why they should not be arrested and incarcerated.

[previous underline is handwritten insertion initialed by SK and LRK]

/s/ Thomas Penfield Jackson
United States District Judge

Date: 10/30/89

We consent to the foregoing:

/s/ Shirley Kearing
Shirley Kearing

./s/ Leon Kearing, M.D. 10/31/89
Leon R. Kearing

FILED OCTOBER 17, 1989
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Misc. No. 89-224
SHIRLEY M. KEARING,	)	[Bankruptcy Case
Debtors	)	No. 86-00913]

ORDER TO SHOW CAUSE

Upon consideration of the Emergency Motion of the Trustee for Issuance of an Order to Show Cause, and the record in support thereof, it is this 17th day of October, 1989,

ORDERED, that the motion is granted; and it is

FURTHER ORDERED, that Shirley M. Kearing appear in person before this Court on the 30th day of October, 1989, at 10:00 a.m., and show cause, if any there be, why she should not be held in criminal and/or civil contempt as prayed, failing which a bench warrant shall issue for her arrest; and it is

FURTHER ORDERED, that on or before the 30th day of October, 1989, Leon R. Kearing show cause in writing filed herein why he should not be held in civil contempt a prayed; and it is

FURTHER ORDERED, that the U.S. Marshal cause a copy of this Order to Show Cause to be served personally on Shirley M. Kearing, in addition to any appropriate substituted service, but failure to effect such personal service shall not affect the validity hereof.

/s/ Thomas Penfield Jackson
Thomas Penfield Jackson
U.S. District Judge

FILED JANUARY 22, 1990
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHIRLEY M. KEARING
4200 Cathedral Avenue, N. W.
Apartment 915
Washington, D. C. 20016

(202) 244-6198

PLAINTIFF,

vs.

Civil Action
No. 89-2837
(GAG)

The Honorable
S. Martin Teel, Jr.
Bankruptcy Judge
United States
Bankruptcy Court for
the District of Columbia
Room 2106
3rd Street &
Constitution Avenue, N. W.
Washington, D. C. 20001

and

Martin L. Bloom
Clerk
United States
Bankruptcy Court for
the District of Columbia
Room 2400
3rd Street &
Constitution Avenue, N. W.
Washington, D. C. 20001

and

John W. Guinee, Jr.
1514 Inlet Court
Reston, Virginia 22090

and

Peter R. Kolker, Esq.
1201 Connecticut
Avenue, N. W.
Washington, D. C. 20036

and

Renee Franklin Hill, Esq.
Office of Bar Counsel
Board on
Professional Responsibility
District of Columbia
Court of Appeals
515 5th Street, N. W.
Building A
Washington, D. C. 20001

and

The Law Firm of Zuckerman,
Spaeder, Goldstein,
Taylor & Kolker
1201 Connecticut
Avenue, N. W.
Washington, D. C. 20036

and

Dennis Early, Esq.
Office of the
United States Trustee
421 King Street
Alexandria, Virginia 22314

and

John Waites, Esq.
United States Trustee
421 King Street
Alexandria, VA 22314

Defendants.

COMPLAINT FOR DAMAGES (ILLEGAL ARREST)

1. This Court has jurisdiction pursuant to thc United States Constution, Amendment V, and 42 U.S.C.A. 1983.

2. Plaintiff is an adult citizen of the United States and a resident of the District of Columbia.

3. On or about October 14, 1988, at 3:15 p.m., under "color of law" the above named defendants, through malfeasance, misfeasance and nonfeasance of duty, did cause a tortious act by violating plaintiff's guaranteed fundamental protection of due process of law by consummating an illegal arrest and incarceration of the above-named plaintiff in blatant and malicious use of process in

direct violation of the Constitution of the United States of America.

WHEREFORE, the premises considered, the plaintiff demands judgment against the above-named defendants in the amount of TWENTY-NINE MILLION DOLLARS ($29,000,000.00).

Plaintiff Demands Trial by Jury.

/s/ Shirley M. Kearing
SHIRLEY M. KEARING, Plaintiff

FILED AUGUST 2, 1989
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Civil Action
SHIRLEY M. KEARING,	)	No. 88-1232
Debtors	)	

ORDER

It appearing that the Bankruptcy Court has failed to make the certification contemplated by D.D.C. Rule 604(c) as to various interlocutory rulings sought to be appealed, and that the single final ruling is now moot, it is, this 2nd day of August, 1989,

ORDERED, that the debtors' motion for leave to appeal is denied; and it is

FURTHER ORDERED, that this action is dismissed with prejudice.

/s/ Thomas Penfield Jackson
Thomas Penfield Jackson
U.S. District Judge

FILED AUGUST 2, 1989

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Civil Action
SHIRLEY M. KEARING,	)	No. 88-1232
Debtors	)	

MEMORANDUM AND ORDER

This case is presently before the Court on an appeal from an adjudication by the U.S. Bankruptcy Court of civil contempt of Shirley M. Kearing, a debtor in possession.

On April 23, 1988, the Bankruptcy Court entered an order directing the debtor, Shirley M. Kearing, to "cooperate" with the Trustee in endeavoring to sell real property belonging to the estate, to turn over rents she had collected, and to provide the Trustee with copies of banking records. On the same date, Ms. Kearing attempted an appeal of certain earlier orders of the Bankruptcy Court, including its appointment of the Trustee, as well as

the order of April 23rd.

On August 11, 1988, this Court, deeming the appeal to relate to interlocutory rulings of the Bankruptcy Court, treated Ms. Kearing's notice of appeal as a motion for leave to appeal, and stayed all appellate proceedings before it, pending a determination by the Bankruptcy Court as to whether a controlling question of law was presented.[1]

The Bankruptcy Court did not make the required certification, but Ms. Kearing nevertheless failed to comply with the order of April 23rd. Accordingly, upon the Trustee's motion, on June 30, 1988, the Bankruptcy Court issued an order to Ms. Kearing to show cause why she should not be held in contempt of court. Following a

---

[1] This Court had previously denied, on July 8, 1988, Ms. Kearing's "emergency motion" for a stay of "all judgments, orders, decrees and for all other relief" pending appeal.

hearing on September 20, 1988, the Bankruptcy Court entered an order of contempt on September 29, 1988, holding Ms. Kearing in contempt. This appeal, as to which no certification is necessary, followed.

The only assignment of error is Ms. Kearing's contention that this Court's Order of August 11, 1988, operated to stay all proceedings in both courts. Hence, she argues, the Bankruptcy Court was without power to hold her in contempt.

Ms. Kearing, however, misapprehends the effect of the August 11th order. It expressly states that "all further proceedings with respect to this appeal are stayed" pending the Bankruptcy Court's certification, which has not been forthcoming. The underlying Chapter 11 case in the Bankruptcy Court has at all times remained active, and remains so

today.

No other error appearing from the record, the Bankruptcy Court's Findings of Fact and Conclusions of Law, and its Order of Contempt of September 29, 1988, are this 2nd day of August, 1989, affirmed.

/s/ Thomas Penfield Jackson
Thomas Penfield Jackson
U.S. District Judge

FILED MARCH 29, 1988
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re	:	Civil No. 88-1232
	:	JACKSON, J.
LEON R. AND	:	----------
SHIRLEY M. KEARING,	:	Bankruptcy No.
	:	86-00913
Debtors.	:	(Chapter 11)

BRIEF ON BEHALF OF SHIRLEY M. KEARING

Issues Presented

1. Whether the District Court's order that "... all further proceedings with respect to this appeal are stayed pending submission of the Bankruptcy Judge's written certification ..." together with Bankruptcy Rule 8005, required the Bankruptcy Judge to protect the rights of the debtor in the issues pending?

2. Whether Shirley Kearing, debtor, was reasonably fearful that cooperation with the "trustee," then being coerced by the bankruptcy judge's threatened contempt order, would enable the trustee to sell her home to a third party and thereby make her appeal moot while it awaited the Bankruptcy Judge's certification?

Statement of Facts

On April 21, 1988, debtors filed a Notice of Appeal to the District Court from the Bankruptcy Court in Bankruptcy No. 86-00913.

Four days later, on April 25, 1988, the Bankruptcy Court in that case entered an order requiring that debtors

> [M]ake available for inspection the real property owned by said Debtors, including 4801 Van Ness St. ... by the Trustee and/or an agent ... at 12 noon to 5:00 p.m. on Sunday, as reasonably necessary to determine the marketability of the home, at a time to be fixed in writing delivered to Debtors' home by 13 hours in advance or by telephone 3 hours in advance and it is further
>
> ORDERED that the Debtors cooperate with the Trustee and his agent(s) in an effort to obtain offers to purchase the real property designated above [etc.]

On August 3, 1988, debtors filed in this Court their 30-page Motion for Leave to Appeal, as an extension of their earlier "Notice of Appeal." They questioned, among other things, the propriety and legality of the appointment of the Trustee by the

Bankruptcy Court. [pages 24 and 25].

> On August 12, 1986, the District Court ordered: [A] written certification stating whether, in the Bankruptcy Judge's opinion, and after considering the motion for leave to appeal and the answers thereto, the interlocutory orders appealed involve a "controlling question of law as to which there is a substantial ground for difference of opinion and whether an immediate appeal from the order[s] may materially advance the ultimate termination of the case ....

On January 6, 1989, the Bankruptcy Judge filed his certification in response to the August 3rd Order of the District Court.

In the meantime, on June 30, 1988, the Bankruptcy Court, on the motion of the trustee, issued an Order to debtors to "show cause why they should not be punished for civil contempt of court because of their misconduct in failing to obey, comply and carry out the provisions of the order [of April 25, 1988]."

On September 14, 1988, the Bankruptcy Court appointed counsel to defend Shirley

Kearing of the contempt charge, and held the hearing on September 20, 1988.

At the hearing of September 20, 1988, counsel for Mrs. Kearing advised the Bankruptcy Judge of Mrs. Kearing's conviction that the District Court Order of August 12 stayed these proceedings, and that she had sought clarification by attempting to file an application for a stay of these proceedings but it was not received because of the stay itself. [T12-14].

Kearing's counsel also advised the Bankruptcy Judge of Mrs. Kearing's relating of her previous experience where a previous appeal was mooted by the Trustee's hasty transfer of the deed shortly before the scheduled hearing which effectively deprived her of any appellate protection on that issue; and her continued fear that if she cooperates with the Trustee's attempt

to sell her home she will be faced with a fait accompli when she asks for review. [T.14].

Neither the Bankruptcy Court nor the Trustee responded to Mrs. Kearing's fears. She was held in contempt by the proposed Order.

ARGUMENT

It is apparantly a reality that important rights to appellate review might be lost by a transfer pending appeal. But is also the duty of teh Bankruptcy Judge expressed in Bankruptcy Rule 8005 to protect the rights of the parties pending appeal. That Rule States "[T]he bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest." (underscoring

supplied) (Id.). The rule could have been written to omit the word "other" before proceedings, which would have given the Bankruptcy Judge unlimited discretion. We submit that the use of "other" before "proceedings" implies that the Bankruptcy Judge should not proceed on the issues then pending in a manner which would jeopardize the rights of the aprties. While it is true that the Bankruptcy Judge had not yet ordered or approved a specific sale of the Kearings' home, the Mrs. Kearing had a fear founded on experience that if they obeyed the Order by cooperating in the sale of their home there important right to appellate review would become meaningless.

This Bankruptcy Rule read in conjunction with Judge Jackson's Order that "[A]ll furhter proceedings with respect to this appeal are stayed pending ... certification" would seem to indicate that

those issues pending review are to be preserved and no action taken which would prejudice the parties' right to that review.

Unfortunately for Mrs. Kearing she had experienced that loss of the right to review in connection with the earlier sale of other real estate which she opposed. That deed was recorded hours before her appeal was to have been heard, making it moot.

The suggestion of appointed counsel before the Judge below, made at the commencement of the contempt hearing, that the proceedings should be stayed in view of Judge Jackson's order was to no avail. Clearly it would have been an exercise in futility to formally move for a stay as is shown by the later denial of such a motion formally made immediately before Mrs. Kearing's objections to the proposed

contempt order.

It does appear that the debtors have a substantial issue which they are attempting to preserve on appeal:

Debtors discharged their original attorney when it appeared that legal fees and taxes incurred by the bankruptcy sale of several real estate parcels was eating up so much of their cushion that they would lose their home as well, and that instead of the re-organization under Chapter 11 originally contemplated, they would have nothing left other than the statutory exemption and their creditors would be left with little or nothing.

Debtors were acting thereafter pro se. The bankruptcy Judge, on November 6, 1988, threatened to appoint a trustee if they did not secure an attorney for the estate within thirty days from the entry of that Order. On November 12, 1988, Notice of the

Order was mailed by the Clerk. On November 7, 1988, the debtors in possession filed a handwritten application for leave to hire attorney (Huffstetler) who apparantly had offered to act as attorney for the estate without fee, but the bankruptcy Judge, by Order of December 9th appointed the trustee and on the following December 31st the bankruptcy Judge denied the application of debtors made through attorney Huffstetler for the removal of the trustee. The bankruptcy Judge explicitly refused to appoint attorney Huffstetler on the grounds that Mr. Huffstetler (who was an active practicing attorney and certified public accountant but with little or no experience in bankruptcy) was not qualified by experience, and as a nephew by marriage he was disqualified as an "insider," citing U. S. Code 11-§327(a).

But § 327(a) is not applicable to the

case at bar. In In re Covey, 57 B.R. 665 (Bkrtcy. D.S.D. 1986) it was pointed out that § 327(a) applied only to trustees not to debtors in possession as is the case here. Covey approved of a nephew-attorney acting as attorney for the debtors in possession saying:

> The trustee is required to be aloof from all connection with the debtor and its management. To require less of the trustee's attorney, who would be active in furthering the trustee's duties, would be illogical. The debtor-in-possession, however, is certainly not aloof from the debtor nor the management of the estate -- the debtor-in-possession is the debtor, managing the estate. Other facts take on more importance as a result, such as an attorney's familiarity with the affairs of the debtor and a debtor's confidence in overly rigid, mechanical application of the standards to the debtor-in-possession would serve no one's best interests. (emphasis in original) (Id. at 666).

The same result was reached in In re Heatron, Inc., 5 B.R. 703 (Bkrtcy WD MO 1980); and In re O'Connor, 52 B.R. 892 (Bkrtcy. WD OK 1985).

The trustee, having been appointed, has now retained counsel. Instead of having a single attorney working pro bono with the full confidence and cooperation of the debtor in possession there is now an attorney charging as much or more than the original attorney, plus a trustee, all to be paid from the estate and ultimately from the creditors and debtors, thus thwarting the purpose of the Bankruptcy Act prompted by a mindlessly rigid and mechanical misapplication of the Rules.

CONCLUSION

Mrs. Shirley Kearing was defending her rights in good faith in an honest and conscientious belief that only by doing so could she preserve her home against forced sale, when it appeared to her that there were reasonable alternatvies presented by the employment of her own attorney. There is a sufficient basis therefore in

presenting the issues of the legality of the trustee in the only forum available to her by the means she adopted. She would not therefore be found in contempt.

Respectfully submitted,

/s/ Joseph Zitomer
Joseph Zitomer, Bar # 138925
850 Sligo Avenue, Suite 501
Silver Spring, Md., 20910.
(301) 589-1002
Attorney for Shirley M. Kearing

FILED MARCH 27, 1989
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re	:	Civil No. 88-1232
	:	JACKSON, J.
LEON R. AND	:	----------
SHIRLEY M. KEARING,	:	Bankruptcy No.
	:	86-00913
Debtors.	:	(Chapter 11)

REPLY BRIEF OF SHIRLEY KEARING

The Trustee in his Brief, page 2, notes that Debtors "strenuously objected to the appointment of the Trustee;" that thereafter they "refused to cooperate with the trustee in any manner;" but he omits the fact that the debtors substantially complied with the bankruptcy judge's order of November 7, 1987, that they employ an attorneyh for the estate by December 7th, 1987, or a trustee would be appointed. Neither does the trustee allude to the fact that the bankruptcy judge, instead of holding hearing on the hiring of their attorney, without further notice or

opportunity for hearing appointed the Trustee. The Trustee's assertion of their refusal to cooperate with the trustee is true, but without stating their reasons it is a simple effort to make the debtors appear arbitrary and unreasonable.

While the bankruptcy court undoubtedly had the power " ... to issue any order, process, or judgment that is necessary or appropriate ... [11 U.S. Code, §105, emphasis added] Debtors earnestly and consistently contend now, as they did at the September 20th hearing, that the bankruptcy court did not have the power arbitrarily to appoint the Trustee; that the appointment was therefore invalid and they could not properly be held in contempt for failing to cooperate with his efforts to sell their house, among other things.

As a general rule, the party being held in civil contempt of court is allowed to

challenge the underlying validity of that order. U.S. v. Campbell, 761 F.2d 1181 at 1185 (CCA-6, 1985).

The trustee urges this Court to limit de novo review to a single issue because "Debtors only specifically objected to the finding that the April 25, 1988, Order was ±subject to a motion for leave to appeal but it had not been stayed pending appeal.'"

But Rule 9033 (d) limits objections to the findings or conclusions of the bankruptcy judge and in this instance the bankruptcy judge made no findings or conclusions regarding the legality of the trustee even though it was repeatedly brought home to the judge at the hearing of September 20, 1988.

While it might have been the better and safer practice to make objections to issues not addressed by the bankruptcy judge, the

Rule does not require this. The Rule places the burden on the proponent of the contempt charge to address the issues first and where the issues are presented but not ruled on, this omission should not prejudice the victim.

Nevertheless Debtors in the same documents which make the "specific objections" states among the Grounds for Objection at pages 4 and 5 that the bankruptcy court erroneously refused to appoint their attorney and unnecessarily appointed the Trustee, and cited the same cases which Debtors rely upon in their main brief to this Court. The Trustee cannot claim the issue is a "surprise." There is an unmistakable touch of irony in the fact that the Trustee who enjoyed the benefit of due process which Debtors were denied, now weeks to bar their right to review on procedural grounds alone.

At the contempt hearing of September 20, 1988, Mrs. Kearing testified in pertinent part as follows:

> [TRUSTEE'S ATTORNEY]: Now, Mrs. Kearing, in the course ofthat case, has it come to your attention that an order was issued by this Court on April 23, 1988 requiring you to cooperate with the trustee in certain specific ways?
>
> A. Yes, but I don't believe the trustee is legally appointed and this is why I'm opposing that and I still am opposing it. [Tr. 9/20/88, p. 19].,
>
> * * *
>
> "I do not acknowledge that the trustee is a qualified trustee. As far as I'm concerned, I'm my own debtor in possession. [Tr. 20].
>
> "I do not acknowledge the trustee as being legal." [Tr. 21]
>
> "I do not acknowledge the trustee." [Tr. 22]
>
> "I do not acknowledge the legality of the trustee." [Tr. 22]
>
> "I did not want a trustee appointed. He was appointed, there was no hearing finding me incompetent to be my own debtor in possession, I have not been able to exercise my rights there." [Tr. 23]

"I do not recognize the legality of the trustee. That is one of the major issues that's up in the District Court for appeal." [Tr. 24]

THE COURT: Let me understand your answer. Are you saying that you refuse to cooperate with the trustee in the showing of your residence to prospective purchasers?

THE WITNESS: I'm saying I don't recognize the trustee as a person who can compel me to do this. I have this on appeal.

THE COURT: Listen to the question. Are you saying that you refuse to cooperate with the trustee in showing your residence to prospective purchasers, yes or no?

THE WITNESS: I'm not sure that --

MR. ZITOMER: Your Honor, I think the problem is she has trouble with the word "trustee," since she doesn't recognize the trustee as a trustee ...

Because she takes the position that there is no trustee. Right or wrong, that's her position. I think that's the problem of semantics that we're having. [Tr. 24]

Mrs. Kearing's State of Mind: Scienter

Despite the trustee's argument to the contrary, Debtors' state of mind on the issue of contempt is relevant and material. Whether they had reasonable grounds to believe the proceedings were stayed and

taht they were not in violation of the Bankruptcy Judge's Order requires an inquiry into the issue of scienter.

We submit first that Debtors reasonably believed that this Court's Order staying proceedings applied to the contempt proceedings below and that they stay applied to the proceedings before the Bankruptcy Judge to the extent those proceedings were inconsistent with the issues on appeal.

This belief of Mrs. Kearing was not unreasonable in view of the fact that she had attempted to file in this Court a motion seeking a stay of the bankruptcy contempt proceedings and was informed that "... they would not accept the papers because everything had been stayed ...." [Tr. 14, Sept. 20, 1988]. This belief is reinforced by Bankruptcy Rule 8005, Stay Pending Appeal, which provides that

> the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. [emphasis supplied]

The Trustee's argument that this Court had previously denied "Debtors' July 1, 1988, Emergency Motion for a Stay ..." [Trustee's Br. p. 9] is misleading. The 14-page transcript of that July 8, 1988, hearing is reproduced as an appendix hereto, and demonstrates that this Court denied the Emergency Application because the Trustee's transfer of the real estate befor3e the hearing rendered it moot, stating "the transactions are a fait accompli ...." [July 8, 1988, Tr. 4, 13]. This ability of the Trustee to thwart the right of meaningful review by this Court is further evidence of Debtors' experience with the bankruptcy court and the Trustee.

If the proceedings below were not stayed by this Court's stay order, they would be faced with a further "fait accompli" in the sale and transfer of their home before this Court could intervene. A continuation of these proceedings in the face of this Court's stay order and Rule 8005 threatened the due process to which Debtors were entitled before their home could be sold out from under them and is therefore within the scope of reasonable, foreseeable conduct.

Finally we not that the Trustee's Brief page 10 alleges erroneously, we submit, taht this "Court denied her Motion for Leave to Appeal at a status call on January 27, 1989." We do not recall that this Court denied their Motion, nor does such a denial appear as a docket entry. We do recall that this Court stated that the bankruptcy judge had not certified their

Motion for Leave to Appeal.

CONCLUSION

Debtors pray that this Court find that the Trustee has not shown by clear and convincing evidence that the Order appointing the Trustee was valid; that Debtors cannot be found in contempt for failure to obey an invalid order; that Trustee has not shown by clear and convincing evidence that Debtors did not have reasonable grounds to believe that these proceedings had been stayed. For the foregoing reasons the citation for contempt should be dismissed.

Respectfully submitted,

/s/ Joseph Zitomer
Joseph Zitomer, Bar # 138925
850 Sligo Avenue, Suite 501
Silver Spring, Md., 20910.
(301) 589-1002
Attorney for Shirley M. Kearing

FILED FEBRUARY 13, 1989

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Civil Action
SHIRLEY M. KEARING,	)	No. 88-1232
Debtors	)	

ORDER

Upon consideration of the debtors-appellants' emergency motion for reconsideration of debtors-appellants' petition for a writ of mandamus, and in the alternative, motion for issuance of a show cause order, and debtors-appellants' emergency motion for a stay of all judgments, it is, this 13th day of February, 1989,

ORDERED, that the motions are denied.

/s/ Thomas Penfield Jackson
Thomas Penfield Jackson
U.S. District Judge

FILED JANUARY 19, 1989
UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re	:	
	:	Case No. 86-00913
LEON R. AND	:	(Chapter 11)
SHIRLEY M. KEARING,	:	
	:	
Debtors.	:	

ORDER RE TRANSMISSION TO DISTRICT COURT
OF OBJECTIONS TO CONTEMPT RULING

On September 30, 1988, this Court entered an Order of Contempt together with Findings of Fact and Conclusions of Law Re Contempt. Docket Entries ("DE") Nos. 241 and 242. Pursuant to a timely motion, the Court extended the time for Mrs. Kearing to file objections to the contempt ruling to October 24, 1988. DE No. 251. On October 24, 1988, the Debtors filed Debtors' Objections and Requests for De Novo Review and Hearing of the Bankruptcy Judge's Findings of Fact and Conclusions of Law. DE No. 256.

The de novo review procedures of

Bankruptcy Rule 9033 (applicable to matters under 28 U.S.C. § 157(c)(1) are expressly made applicable to contempt matters by Bankruptcy Rule 9020(c). District Court Local Rule 603(b), the local rule governing such de novo review, in turn makes Local Rule 602(d), (e), and (f) applicable to control the mechanics of designation of the record, responses to objections, reply, and transmittal to and proceedings in the District Court.[2]

With respect to the matter of the designation of the record, the Debtors failed to designate any record. The Court will, therefore, assume that the Debtors intend not to rely on anything other than

---

[2] However, Local Rule 603(b), instead of Local Rule 602(f), controls the matter of assignment of the objections to a District Court Judge for review.

their objections to the contempt ruling.[3]

---

[3] TTe only objection to the contempt ruling is the Debtor's contention that the Bankruptcy Court erred in finding that the Bankruptcy Court's Order of April 25, 1988 had not been stayed by the District Court pending the appeal in Civil Action No. 88-1232 and in thus finding that the Order's violation was a contempt of court. The contention, in the Bankruptcy Court's view, is frivolous and the Bankruptcy Court would respectfully recommend that the objections to the Bankruptcy Court's contempt ruling be ruled upon prior to a ruling on the motion for leave to pursue an interlocutory appeal. If the Bankruptcy Court's contempt ruling is adopted, it may be made subject to vacation at a later date in the event an interlocutory appeal is granted in Civil Action No. 88-1232 and the underlying Order of April 25, 1988 is set aside. See U.S. v. Unite Mine Workers, 330 U.S. 258, 295 (1947) (civil contempt order does not survive reversal of violated injunction that gave rise to contempt order).

Unless the appellate court stays a contempt order pending the appeal of the order violated, the contempt order remains enforceable. Matter of Campbell, 761 F.2d 1181, 1186 (6th Cir. 1985). In this Court's view, the minimal likelihood of success on appeal of the Order of April 25, 1988, warrants the District Court's adoption of the contempt order without awaiting final determination of the motion of leave to appeal the April 25, 1988 order in Civil Action No. 88-1232 The Trustee ought to be allowed to get about his business of selling the house, with the

With respect to the matter of a response by the Trustee, there seems to have been some confusion on the part of the Trustee arising from the manner in which the Debtors filed their objections to the contempt ruling. When the Debtors filed their objections to the contempt ruling, they accompanied it with a Motion for Stay of Contempt Proceedings and in support thereof referred to the objections to the contempt ruling filed therewith. See DE No. 255. On November 7, 1988, the Trustee filed a timely opposition to the Debtor's Motion for Stay of Contempt Proceeding. See DE No. 260. That opposition addresses the Debtors' contentions in their objections to the contempt ruling and ought to be treated as a response under Local

---

cooperation of the Debtors, without the necessity of having to bring an ejectment action to oust the Debtors from the premises in order to make a sale.

Rule 602(e) to the Debtors' objections to the contempt ruling.

Apparantly because of the Debtors' failure to file a designation of record as required by Local Rule 602(d), the Clerk failed to transmit the record to the District Court as required by Local Rule 602(f). There is no sanction for failure to timely designate the record. Accordingly, it is

ORDERED that the Clerk of the Bankruptcy Court shall forthwith transmit to the Clerk of the District Court the following papers as the record for determination of the Debtors' objections to the Bankruptcy Court's contempt ruling:

1. Findings of Fact and Conclusions of Law Re Contempt. DE No. 242.

2. Order of Contempt. DE No. 241.

3. Motion of Shirley M. Kearing to Extend Time for Filing Objections to

Proposed Findings of Fact and Conclusions of Law, and Contempt Order. DE No. 246.

4. Order (enlarging time to file objections). DE No. 251.

5. Debtors [sic] Motion for Stay of Contempt Proceedings. DE No. 255.

6. Debtors' Objections and Request for De Novo Review and Hearing of the Bankruptcy Judge's Findings of Fact and Conclusions of Law. DE 256.

7. Debtors' Request for Oral Hearing. DE No. 258

8. Praecipe (requesting Bankruptcy Judge's attention to motion for stay). DE No. 257.

9. Trustee's Opposition to Debtors' Motion for Stay of Contempt Proceedings. DE No. 260.

10. Order Denying Motion for Stay. DE No. 280.

11. Order Re Transmission to District

Court of Objections to Contempt Ruling (i.e., this Order). It is further

ORDERED that, after the opening of a docket in the District Court in accordance with Local Rule 602(f), documents pertaining to the District Court's review of the objections to the Bankruptcy Court's contempt ruling shall be filed with the Clerk of the District Court.

Dated: January 18, 1989.

/s/ S. Martin Teel, Jr.
S. MARTIN TEEL, JR.
United States Bankruptcy Judge

FILED OCTOBER 24, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

RELIEF IS SOUGHT FROM
A UNITED STATES DISTRICT JUDGE

In re	:	
	:	Case No. 86-00913
LEON R. AND	:	
SHIRLEY M. KEARING,	:	(Chapter 11)
	:	
Debtors.	:	

DEBTORS' OBJECTIONS AND
REQUEST FOR DE NOVO REVIEW AND HEARING
OF THE BANKRUPTCY JUDGE'S
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Debtors, Leon R. and Shirley M. Kearing, by and through Joseph Zitomer, attorney appointed to defend Shirley M. Kearing, pursuant to Bankruptcy Rule 9033 and Local Rule 603, object to the proposed Findings of Fact and Conclusions of Law re Contempt, of the Bankruptcy Judge, and to his proposed Order of Contempt entered on September 30, 1988, and states as follows:

1. Joseph Zitomer was appointed by the Bankruptcy Court Order of September 14,

1988, pursuant to the Criminal Justice Act, to appear and defend on behalf of Shirley M. Kearing with respect to the motion of the Trustee to hold her in contempt.

2. Although Leon R. Kearing, her husband, is not cited for contempt he agrees with the arguments of his wife in support of her objections and because issues of fact and of law are common to both he has authorized counsel for his wife to make him a party hereto.

3. These objections are timely filed, the time for filing having been extended to October 24, 1988 by Order of the Bankruptcy Judge on motion made within 10 days of the Findings of Fact and Conclusions of Law.

Objections to Findings of Fact

Objection: To the following Finding insofar as it states the subject has not been stayed pending appeal:

"That Order is the subject of a motion

for leave to appeal but it has not been stayed pending appeal." (Page 2 Id.)

Grounds for Objection: The District Court in Civil Action No. 88-1232, per Jackson, J., on August 11, 1988, ordered "that all further proceedings with respect to this appeal are stayed pending submission of the Bankruptcy Judge's written certification ...." Because the bankruptcy Judge has made no reply, that appeal is still pending certification. Instead, the bankruptcy Judge, on Trustee's motion, is threatening Shirley Kearing with contempt arising out of the same issues that are stayed pending appeal.

If she complies her appellate rights will be extinguished as moot by the fait accompli of the sale of her home. It appears therefore that only by risking contempt can Shirley Kearing preserve her right to review. Since Bankruptcy Rule

8005 provides that the bankruptcy judge should protect the rights of all parties pending appeal it should not be necessary that she risk contempt. But the Judge below apparantly overlooks taht protion of the Rule which states "[T]he bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest." (underscoring supplied) (Id.).

This Bankruptcy Rule read in conjunction with Judge Jackson's Order that "[A]ll further proceedings with respect to this appeal are stayed pending ... certification" would seem to indicate that those issues pending review are to be preserved and no action taken which would prejudice the parties' right to that

review.

Unfortunately for Mrs. Kearing she had experienced that loss of the right to review in connection with the earlier sale of other real estate which she opposed. That deed was recorded hours before her appeal was to have been heard, making it moot.

The argument of appointed counsel before the Judge below, made at the commencement of the contempt hearing, that the proceedings should have been stayed in view of Judge Jackson's order was to no avail. Clearly it would have been an exercise in futility to formally move for a stay. However in order to protect the record a formal motion to the bankruptcy Judge for Stay has been filed contemporaneously.

The Elements Warranting a Stay

The four elements warranting and compelling the exercise of discretion to

stay the proceedings are here present and will be addressed below:

(1) She has meritorious appeal.

(2) She would suffer irreparable harm if the stay is not granted.

(3) The stay would not substantially harm the other parties.

(4) The stay would serve the public interest in providing a means by which the debtor could preserve her home and family intact and provide a greater return for creditors.

First: (1) The merits of her appeal.

Debtors discharged their original attorney when it appeared that legal fees and taxes incurred by the bankruptcy sale of several real estate parcels was eating up so much of their cushion that they would lose their home as well, and that instead of the re-organization under Chapter 11 originally contemplated, they would have

nothing left other than the statutory exemption and their creditors would be left with little or nothing. They were solvent when the original petition was filed and had a cushion of over $150,000. Their original attorney had already been awarded approximately $54,000 and taxes incurred by the bankruptcy sale were as yet unknown.

Debtors were acting thereafter pro se, but when the bankruptcy Judge threatened to appoint a trustee if they did not secure an attorney for the estate within a limited time, they secured the services of their nephew-in-law, Michael Huffstetler, an active practicing member of the D. C. Bar and an experienced lawyer and certified public accountant but with little or no experience in bankruptcy. He offered to act as attorney for the estate without fee and entered his appearance timely but the bankruptcy Judge refused to appoint him on

the grounds that Mr. Huffstetler was not qualified by experience, and as a nephew by marriage hew was disqualified as an "insider," citing U. S. Code 11-§327(a).

But § 327(a) is not applicable to the case at bar. In In re Covey, 57 B.R. 665 (Bkrtcy. D.S.D. 1986) it was pointed out that § 327(a) applied only to trustees not to debtors in possession as is the case here. Covey approved of a nephew-attorney acting as attorney for the debtors in possession saying:

> The trustee is required to be aloof from all connection with the debtor and its management. To require less of the trustee's attorney, who would be active in furthering the trustee's duties, would be illogical. The debtor-in-possession, however, is certainly not aloof from the debtor nor the management of the estate -- the debtor-in-possession is the debtor, managing the estate. Other facts take on more importance as a result, such as an attorney's familiarity with the affairs of the debtor and a debtor's confidence in overly rigid, mechanical application of the standards to the debtor-in-

possession would serve no one's best interests. (emphasis in original) (Id. at 666).

The same result was reached in In re Heatron, Inc., 5 B.R. 703 (Bkrtcy WD MO 1980); and In re O'Connor, 52 B.R. 892 (Bkrtcy. WD OK 1985).

The trustee, having been appointed, has now retained counsel. Instead of having a single attorney working pro bono with the full confidence and cooperation of the debtor in possession there is now an attorney charging as much or more than the original attorney, plus a trustee, all to be paid from the estate and ultimately from the creditors and debtors, thus thwarting the purpose of the Bankruptcy Act prompted by a mindlessly rigid and mechanical misapplication of the Rules.

Second: (2) Shirley Kearing would suffer irreparable harm if the stay were not granted.

Just as the earlier sale of another parcel of real estate was mooted by the recording of the deed the day before the scheduled hearing of the District Judge, Shirley Kearing knows that her cooperation with the Trustee will place him in the same position to do irreparable harm. He will be able to secure a contract and the bankruptcy Judge's approval of a sale and record the deed before the pending appeal could be heard making her appeal moot.

Third: (3) The stay would not substantially harm the other parties.

There are no fungible goods to lose, machinery to wear out, nor assets subject to rapid depreciation. Quite the reverse is true. The only major asset left is their home at 4801 Van Ness Street, N. W., Washington, D. C., a neighborhood where the price of homes has appreciated substantially since the petition was filed,

so much so that if more than off-sets any interest accrued on the outstanding mortgages. Hence no one would be harmed by a stay. On the contrary a stay could affect substantial savings.

Fourth: (4) The stay would serve the public interest in providing a means by which the debtor could preserve her home and family intact and provide a greater return for creditors.

The debtors are confident that they could present a plan to preserve their home and pay off creditors if they were allowed to employ their nephew as attorney for the estate without the burden of trustee's and attorney's fees. They feel that he has such skill, knowledge, and devotion, that with the aid of other relatives they will be able to complete re-organization to the benefit of creditors as well as themselves if given that opportunity and they have

every trust and confidence in him.

WHEREFORE, debtors pray that this court grant a hearing de novo and permit debtors to introduce further evidence and argument in support.

October 24, 1988

/s/ Shirley M. Kearing
Shirley M. Kearing

/s/ Leon R. Kearing
Leon R. Kearing

/s/ Joseph Zitomer
Joseph Zitomer, Bar # 138925
850 Sligo Avenue, Suite 501
Silver Spring, Md., 20910.
(301) 589-1002

FILED OCTOBER 24, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

RELIEF IS SOUGHT FROM
A UNITED STATES DISTRICT JUDGE

In re	:	
	:	Case No. 86-00913
LEON R. AND	:	(Chapter 11)
SHIRLEY M. KEARING,	:	
	:	
Debtors.	:	

DEBTORS' REQUEST FOR ORAL HEARING

Debtors, Leon R. and Shirley M. Kearing, request an oral hearing of their Objections and Request for De Novo Review.

October 24, 1988

Respectfully submitted,
/s/ Joseph Zitomer
Joseph Zitomer

POINTS AND AUTHORITIES

Local Rule 108(f) Request for Oral Hearings

/s/ Joseph Zitomer
Joseph Zitomer, Bar # 138925
850 Sligo Avenue, Suite 501
Silver Spring, Md., 20910.
(301) 589-1002
Attorney for Shirley M. Kearing

FILED AUGUST 12, 1988

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Civil Action
SHIRLEY M. KEARING,	)	No. 88-1232
Debtors	)	

ORDER

It appearing to the Court that the debtors have responded to this Court's order of July 20, 1988, by filing a motion for leave to appeal, and that this Court wishes to request of the Bankruptcy Judge, pursuant to D.D.C. Rule 604(c), a written certification stating whether, in the Bankruptcy Judge's opinion, and after considering the motion for leave to appeal and the answers thereto, the interlocutory orders appealed involve a "controlling question of law as to which there is a substantial ground for difference of opinion and whther an immediate appeal from the order[s] [sic] may materially advance

the ultimate termination of the case"; it is, this 11th day of August, 1988,

ORDERED, that any parties adverse to the debtors may file an answer with the Clerk of the Bankruptcy Court in opposition to the motion for leave to appeal within ten (10) days of the date herein; and it is

FURTHER ORDERED, that all further proceedings with respect to this appeal are stayed pending submission of the Bankruptcy Judge's written certification and accompanying materials to this Court, see Bankr. Rule 8003(b), as well as the ultimate decision of this Court to grant or deny the debtors' motion for leave to appeal.

/s/ Thomas Penfield Jackson
Thomas Penfield Jackson
U.S. District Judge

FILED APRIL 18, 1988

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
LEON R. AND	)	Civil Action No.
SHIRLEY M KEARING	)	88-589 (SSH)
Debtors.	)	

On Appeal from the
United States Bankruptcy Court
for the District of Columbia

Bankruptcy Case No. 86-913
(Chapter 11)

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO DISMISS APPEAL

In support of his Motion to Dismiss, John W. Guinee, Jr., by counsel, respectfully states as follows:

1. On January 14, 1988, Leon R. and Shirley M. Kearing, debtors, by and through their attorney, Michael R. Huffstedler [sic], filed an appeal to the District Court from the orders of the Bankruptcy Court entered in the aforementioned bankruptcy proceeding on the 4th day of January, 1988.

2. On March 3, 1988 the appeal referred to above was entered on the docket and was assigned to Judge Harris and received the civil action number 88-589.

3. On March 3, 1988, notice of the appeal from the United States Bankruptcy Court was mailed to all parties. The notice directed the debtors to serve and file their brief within fifteen days after the entry of the appeal, or by March 18, 1988.

4. As of the date of this Motion, the Trustee has not been served with a copy of Appellants' brief.[4] Therefore, this appeal

---

[4] In their Emergency Motion For Reconsideration For a Stay of All Judgments, Orders, Decrees and for Other Relief Pending Appeal, filed in this appeal, the debtors have indicated that on March 25, 1988 they filed for an extension of time to file their brief on their appeal, on the basis that it was not filed due to "excusable neglect". [sic] The Trustee has not been served with a copy of this Motion and has not had an opportunity to respond to said Motion. This ex parte Application For Extension of Time should

should be dismissed. See, e.g., Matter of Braniff Airways, Inc., 774 F.2d 1303 (5th Cir. 1985); In re Webster, 47 B.R. 1012 (D.C.N.C. 1985); In re Soter, 31 B.R. 986 (D.C. Vt. 1983).

5. Similarly, a motion for leave to appeal must accompany any appeal of the January 4, 1988 orders of the bankruptcy court since they are interlocutory in nature. 28 U.S.C. § 158 (a), Bankruptcy Rules 8001(b), 8003. See, e.g., Petition of Trustees of Joint Welfare Fund, et al., 549 F.2d 871 (2nd Cir. 1977); Pan-Tsu Mow v. Republic of China, 201 F.2d 195 (D.C. Cir. 1952). The Debtors failed to file the required motion for leave to appeal. Therefore, the appeal should be dismissed.

6. The pendency of this appeal is one factor that is unnecessarily hindering the Trustee's ability to proceed with the

---

therefore be considered null and void.

orderly administration of the bankruptcy estate, and may cause injury to the creditors and to the estate in the form of needless delay with a concomitant monetary loss.[5]

Based on the foregoing, the Trustee, by counsel, respectfully requests that this Motion to Dismiss be granted and that he be granted such other relief as this Court deems proper.

---

[5] In the April 7, 1988 hearing in the Chapter 11 proceeding, the debtors admitted that they have been collecting rent on three of the four real properties now owed [sic] by the debtors. All but $1,000 of this money has been converted by the debtors to their own personal use because the Trustee's efforts to obtain control of the debtors' property has been thwarted by the debtors. Consequently, a prompt resolution of the appointment of the Trustee is necessary in order to ensure that the Trustee can move forward with his responsibilities, thereby preventing the assets of the estate from being further depleted.

Respectfully submitted,

/s/ Peter R. Kolker

Peter R. Kolker, #25478
Zuckerman, Spaeder,
Goldstein, Taylor and Kolker
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036

FILED APRIL 18, 1988

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
LEON R. AND	)	Civil Action No.
SHIRLEY M KEARING	)	88-589 (SSH)
Debtors.	)	

On Appeal from the
United States Bankruptcy Court
for the District of Columbia

Bankruptcy Case No. 86-913
(Chapter 11)

MOTION TO DISMISS APPEAL

John W. Guinee, Jr., Trustee to Leon R. and Shirley M. Kearing, debtors in the above-mentioned Chapter 11 proceeding, hereby moves this Court for an order dismissing this Appeal. A memorandum in support of this Motion and a proposed order are attached hereto.

Respectfully submitted,

/s/ Peter R. Kolker
Peter R. Kolker, #25478
Zuckerman, Spaeder,
Goldstein, Taylor and Kolker
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036

FILED MARCH 15, 1988

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re	)
	) Case No. 86-00913
LEON R. AND	) Chapter 11
SHIRLEY M KEARING	)
	) ----------
Debtors.	) District Court
	) Case No. 88-1232
	) TPJ

TRUSTEE'S BRIEF IN OPPOSITION
TO OBJECTIONS OF DEBTORS TO
FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE: CONTEMPT

JOHN W. GUINEE, JR., TRUSTEE
By Counsel

Peter R. Kolker, #25478
Judith Sturtz Karp
Zuckerman, Spaeder,
Goldstein, Taylor and Kolker
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 778-1800

March 15, 1989

TABLE OF CONTENTS

TABLE OF STATUTORY AUTHORITIES..... ii
INTRODUCTION..... 1
ISSUES FOR REVIEW..... 1
STATEMENT OF FACTS AND
PROCEDURAL HISTORY..... 2
ARGUMENT..... 7
CONCLUSION..... 11
APPENDIX OF STATUTES AND RULES
APPENDIX OF MOTIONS, FINDINGS OF FACT,
AND ORDERS

TABLE OF AUTHORITIES

STATUTES AND RULES

Statutes

11 U.S.C. § 363..... 9
11 U.S.c. § 521..... 2

Rules

Bankruptcy Rule 9020..... 1, 7
Bankruptcy Rule 9020(c)..... 7
Bankruptcy Rule 9033..... 1, 7
Bankruptcy Rule..... 7, 8
Bankruptcy Rule..... 8

INTRODUCTION

This matter comes before this Court for de novo review, pursuant to Bankruptcy Rules 9020 and 9033, on the objection of the Debtors herein, Leon R. Kearing[6] and Shirley M. Kearing, to the Findings of Fact and Conclusions of Law Re Contempt and Order of Contempt entered by the United States Bankruptcy Court for the District of Columbia against Shirley M. Kearing on September 30, 1988.

ISSUES FOR REVIEW

Whether the Citation of Contempt of Shirley M. Kearing was appropriate under the circumstances.

Whether the April 25, 1988, Bankruptcy

---

[6] The Bankruptcy Court entered an Order Denying Contempt Motion with Respect to Leon R. Kearing on September 30, 1988. However, Dr. Kearing authorized counsel for Mrs. Kearing, Joseph Zitomer, to join him as a party to the objections to the Bankruptcy Court's Findings of Fact and Conclusions of Law Re Contempt.

Court Order granting the Trustee's Motion to Compel Cooperation by Debtors was stayed pending appeal.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On December 15, 1987, John W. Guinee, Jr., was appointed Trustee of the Chapter 11 estate of Leon R. and Shirley M. Kearing (the "Debtors"), Case No. 86-00913. The Debtors strenuously objected to the appointment of the Trustee, refused to cooperate with the Trustee in any manner, or to perform their statutory duties under 11 U.S.C. § 521. On the 8th of February, 1988, failing to obtain the Debtors' minimal cooperation, the Trustee filed a Motion to Compel Cooperation by Debtors. Among other things, the Trustee specifically requested the Debtors be ordered to turn over records of their bank account at American Security Bank and cooperate with the Trustee in obtaining

offers for the purchase of their residence by permitting access to the premises to determine its marketability and to allow prospective purchasers an opportunity to inspect the home.

No opposition to the Trustee's motion was ever filed. On April 7, 1988, at a hearing on other matters, the Bankruptcy Court requested the Trustee address the Court regarding the merits of the the [sic] Motion to Compel Cooperation of Debtors. Mrs. Kearing was given the same opportunity. Mrs. Kearing argued against granting the motion.

On April 25, 1988, the Bankruptcy Court entered an Order granting the Trustee's Motion to Compel Cooperation of Debtors. The Court, in pertinent part,

> ORDERED that Leon R. and Shirley M. Kearing make available for inspection the real property owned by said Debtors, including 4801 Van Ness Street, N.W.,

Washington, D. C., by the Trustee and/or an agent to be designated by the Trustee, at 12 noon to 5:00 p.m. Monday through Friday and from 1:00 p.m. to 5:00 p.m. on Sunday, as reasonably necessary to determine the marketability of the home ... [sic]

ORDERED that the Debtor Shirley Kearing immediately turn over to the Trustee the funds of Debtors at the American Security Bank, N.A. (the Court finding that these funds represent rents received after the Trustee was appointed) and that the Debtor, Shirley Kearing, immediately turn over to the Trustee any and all rents that she may in the future collect from the tenants of Units 201, 502 and 504, 4444 Connecticut Avenue, N.W., Washington, D. C., and that the Debtor, Shirley Kearing, direct said tenants to make all future rent payments directly to the Trustee ... [sic]

ORDERED that the Debtor, Shirley Kearing, mail to the Trustee by April 17, 1988 copies of all bank statements, cancelled checks, deposit

> slips and withdrawal slips for the Debtors' account at American Security Bank, N.A.....

Lastly, the Debtors were ordered to cooperate with the Trustee generally in order that he fulfill his statutory duties.

On April 25, 1988, the Debtors filed a Notice of Appeal of the Order appointing the Trustee as well as any orders which the Court issued pursuant to the hearing on April 7, 1988, which included the April 25 Order Compelling Cooperation.[7] Simultaneously, the Debtors filed with the Bankruptcy Court an Emergency Application for A Temporary Restraining Order and Motion for Stay Pending Appeal, whereby they requested a stay of all matters pending final determination of the appeals,

---

[7] As the Bankruptcy Court had not actually issued the Order Compelling the Debtors to Appeal, the Notice of Appeal referred to rulings which the Bankruptcy Judge had made at the hearing on April 7, 1988.

as well as an order restraining the Trustee from conducting any of his statutory duties. Both the Application for a Temporary Restraining Order and the Motion for Stay Pending Appeal were denied on April 27, 1988.

Thereafter, the Trustee attempted to gain entry into Debtors' residence by setting appointments with Mrs. Kearing, but all attempts failed. similarly, Mrs. Kearing refused to turn over the bank records of the account at American Security Bank and the rents deposited to that account. When the Trustee attempted to obtain these items, he was told by Mrs. Kearing that she "had no intention of ever complying with the Court Order." Declaration of John W. Guinee, Jr., Trustee, in Support of Motion for Issuance of Show Cause Order, page 2, paragraph 5.

Unable to perform his statutory duties

because of the Debtors' lack of cooperation, on May 19, 1988, the Trustee filed a Motion for Issuance of Show Cause Order, requesting the Court hold the Debtors in contempt for failure to comply with the Court's April 25, 1988 Order.

While the Motion for the Order to Show Cause were under consideration, the appeals of the Order Appointing John W. Guinee, Jr., as Trustee, Order permitting the Trustee to give Standard Federal Savings Bank deeds in lieu of foreclosure, as well as the April 25, 1988 Order Compelling Cooperation of Debtors were pending.

On August 12, 1988, after finding that the Orders on which the Debtors sought appeal were interlocutory, and that the Debtors' Notice of Appeal should be treated as a Motion for Leave to Appeal, the District Court issued an Order which requested a certification from the

Bankruptcy Court Judge, indicating whether each Order noticed for apepal involved a "controlling question of law as to which there was a substantial ground for difference of opinion and whether an immediate appeal from the order(s) may materially advance the ultimate termination of the case." It was further ordered "that all further proceedings with respect to this appeal are stayed pending submission of the Bankruptcy Judge's written certification and accompanying materials to this Court ..., as well as the ultimate decision of this Court to grant or deny the debtors' motion for leave to appeal."

Thereafter, on August 16, 1988, the Bankruptcy Court ordered Mrs. Kearing to appear in court and show cause why she should not be punished for civil contempt of court for failing to obey the Court's April 25, 1988, Order and cooperate with

the Trustee.

Following the appointment of counsel to represent Mrs. Kearing on September 14, 1988, on September 20, 1988 the Court held a hearing on its Order for Mrs. Kearing to show cause why she should not be held in civil contempt.

At the September 20, 1988, hearing, Mrs. Kearing testified tht she willfully ignored the Court's April 25, 1988 Order. Counsel argued that Mrs. Kearing believed that Order to have been stayed by the District Court's Order of August 12, 1988.

On September 30, 1988, the Bankruptcy Court entered an Order of Contempt against Mrs. Kearing, together with Findings of Fact and Conclusions of Law re Contempt. Thereafter, on October 24, 21988, the Debtors filed timely objections to the Findings of Fact and Conclusions of Law and filed a Motion for Stay of Contempt

Proceedings pending the determination of Civil Action 88-1232.[8]

On January 17, 1989, the Bankruptcy Court denied the Debtors' request for stay, holding that since timely objections were filed by the Debtors to the Order of Contempt, the Order of Contempt would not become effective unless it was adopted by the District Court in ruling on the objections. Since there was no contempt order in effect, there was no order to stay.

On February 10, 1989, the Debtors filed an Emergency Motion for a Stay of All Judgments, Orders, Decrees and Other Relief Pending Appeal. On February 13, 1989, the District Court denied the Emergency Motion.

---

[8] The Bankruptcy Judge had not yet issued his written certification as requested by the District Court; therefore, there had not been a decision by the District Court to either grant or deny the Debtors' Motion for Leave to Appeal.

ARGUMENT

Bankruptcy Rule 9020 governs contempt proceedings in the Bankruptcy Court. Bankruptcy Rule 9020(c) sets forth the manner in which an order for contempt shall become effective:

> The clerk shall serve forthwith a copy of the order of contempt on the entity named herein. The order shall become effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within the 10 day period, the entity named therein serves and files with the clerk objections prepared in a manner provided by Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.

Bankruptcy Rule 9020(c).

Rule 9033 provides that a party serve and file with the clerk "written objections which identify the specific proposed findings or conclusions objected to and

state the grounds for such objections ...." Bankruptcy Rule 9033(b) (emphasis added).

Bankruptcy Rule 9033(d) provides the standard of review by the district court of any objections to the Bankruptcy Judge's findings of fact or conclusions of law:

> The district judge shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.

Bankruptcy Rule 9033(d).

Inasmuch as the Debtors only specifically objected to the finding that the April 25, 1988, Order was "subject to a motion for leave to appeal but it had not been stayed pending appeal" (Debtors' Objections and

Request for De Novo Review and Hearing of the Bankruptcy Judge's Findings of Fact and Conclusions of Law, p. 2), that is the only finding to be reviewed by this Court.

As grounds for their objection, the Debtors assert that the August 12, 1988 District Court Order which stayed all briefing and procedural motions pending the outcome of the Motion for Leave to Appeal, also stayed the effect of the Order Compelling Cooperation of Debtors, as well as all other Orders from which the Debtors were seeking leave to appeal.[9]

---

[9] While it is not properly before the Court, the Debtors also now assert that Mrs. Kearing's contempt is excused because she "reasonably" feared taht cooperating with the Trustee would enable the Trustee to sell her home to a third party and thereby make her appeal moot while she awaited the Bankruptcy Judge's certification. Mrs. Kearing would have this Court condone disobeyance [sic] of the Order because she did not want her home to be sold. Though understandable, it does not excuse her behavior. Fear of an undesired consequence of a court order does not make that behavior less contumacious.

There has been no error by the Bankruptcy Court in finding that the August 12, 1988 Order did not stay the enforecement of the Order compelling the Debtors to cooperate with the Trustee. The Bankruptcy Colurt had previously denied the Debtors' motion to stay that Order on April 27, 1988. Similarly, the District Court had denied the Debtors' July 1, 1988 Emergency Motion for a Stay of All Judgments, Orders, Decrees and for Other Relief Pending Appeal on July 8, 1988. Clearly, the District Court's Order staying all further "proceedings with respect to the appeal pending" was not intended to stay the entire bankruptcy case pending

---

The Trustee never requested that the home be actually be sold. That could only happen after specific application to the Court, notice and hearing. 11 U.S.C. §363. Thus her fear was unfounded. Mrs. Kearing is of the firm belief that she could reorganize her financial affairs, but for the appointment of the Trustee. Therefore, she refuses to recognize his authority.

appeal, but rather, the order staying all further proceedings was entered by the Court in order to prevent unnecessary briefing on the appeals while awaiting the Bankruptcy Judge's written certification.

Mrs. Kearing has had plenty of time since September 30, 1988 to think about her actions and remedy them. She has chosen to continue to purposely and callously ignore the Bankruptcy Court's Orders even after the District Court denied her Motion for Leave to Appeal at a status call on January 27, 1989. The Debtors' subsequent Emergency Motion for Stay of All Judgments, Orders, Decrees and Other Relief Pending Appeal filed on February 10, 1989 in the District Court was similarly denied on February 13, 1989; yet, Mrs. Kearing persists in her contempt for the Bankruptcy

Court's Order.[10]

There can be no disputing that the Bankruptcy Court's April 25, 1988 Order was never stayed by any order of either the Bankruptcy Court or District Court.

Since no other objection to the contempt citation has been raised, it is an inevitable consequence of this ruling that the contempt citation should be affirmed by this Court.

---

[10] On January 19, 1989, a fire seriously damaged the Debtors' residence, forcing the Debtors and their tenants to live elsewhere. At this time, the Debtors are not in possession of the property and thus are not presently violating that part of the Order Compelling Cooperation which requires them to make the premises available to the Trustee to determine the property's marketability. The requirement to turn over rents to the Trustee is moot as no portion of the property is now rented. Without the Trustee's specific authority, however, the Debtors are forbidden from re-entering the house, pursuant to a Bankruptcy Court Order entered on February 6, 1989.

CONCLUSION

The April 25, 1988 Bankruptcy Court Order granting the Trustee's Motion to Compel Cooperation of Debtors was not stayed pending appeal by the District Court's August 12, 1988 Order in Civil Action No. 88-1232, or by any other Bankruptcy or District Court order. Therefore, the Bankruptcy Court did not err in its finding. The Debtors' objections must be overruled, and the Court should enter an order of contempt against Mrs. Kearing so that the Trustee can acquire and maintain complete control of the Debtors' estate. The Trustee recommends that the District Court remand this matter to the Bankruptcy Judge to determine the appropriate sanction to be imposed, since the intervening event of the fire has obviated some of Mrs. Kearing's non-compliance.

Respectfully submitted,

/s/ Judith Sturtz Karp
Peter R. Kolker #25478
Judith Sturtz Karp #376235
Zuckerman, Spaeder,
Goldstein, Taylor and Kolker
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/778-1800
Counsel for the Trustee